IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SECOND DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

WRIT PETITION NOs : 19671 and 19938 of 2004

WRIT PETITION NO.19671 of 2004

Between:

Smt.K.Vijayalaxmi, W/o.Sri K.Nageswara Rao,
R/o.18-5-388, Laldarwaja, Hyderabad.

..... PETITIONER

AND

1 The Collector & District Magistrate, Hyderabad District, Hyderabad.
2 The Superintendent of prison, Central Prison, Chanchalguda,Hyderabad.
3 The Government of Andhra Pradesh, General Administration (Law & order-II) Department, rep.by its Chief Secretary to Government, Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue appropriate writ, order or Direction more particularly one in the nature of a writ of Habeas corpus directing the Respondents to produce K.Nageswar Rao @ Gudumba Raju S/o.Sri Sattaiah now detained in the Central prison, chanchalguda and set him at liberty forthwith after declaring his detention as illegal, arbitrary in the interest of justice.

Counsel for the Petitioner: MR. SATISH KUMAR VARMA

Counsel for the Respondents: THE ADVOCATE GENERAL

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WRIT PETITION NO : 19938 of 2004

Between:

Smt.K.Anju W/o.Sri K.Hanumanthu
R/o.18-5-124, Pool Bagh Chaman Laldarwaja, Hyderabad.

..... PETITIONER

AND

1 The Collector and District Magistrate Hyderabad District, Hyderabad.
2 The Superintendent of Prison Central Prison, Chanchalguda, Hyderabad.
3 The Government of Andhra Pradesh General Administration (Law and Order-II), Department represented by its Chief Secretary to Government, Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue appropriate writ, order or direction more particularly one in the nature of a writ of Habeas Corpus directing the Respondents to produce K.Hanumanthu S/o.Sri Sattaiah now detained in the Central Prison, Chanchalguda and set him at liberty forthwith after declaring his detention as illegal, arbitrary in the interest of justice.

Counsel for the Petitioner: MR.MILIND G GOKHALE

Counsel for the Respondents: THE ADVOCATE GENERAL

The Court made the following :

COMMON ORDER: (per Hon'ble Sri Justice Bilal Nazki)

These petitions are filed challenging the orders of detaining authority, detaining the detenu in terms of the provisions of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter referred to as "the Act").

Though various grounds have been stated in the grounds of detention and various grounds have been taken in the writ petitions for challenging the orders of detention, learned counsel for the petitioners submit that the detention is illegal, on the ground that one of the grounds for detaining the detenus was that a third person was arrested, who possessed the illicit liquor, and that third person had stated to the concerned authorities that the said liquor belonged to the detenus. The liquor seized from such third person was sent to the chemical analyst and the chemical analyst report was not available with the detaining authority, when he passed the orders of detention. In one of the writ petitions, being W.P.No.19938 of 2004, Ground No.2 was stated in the following terms:

> "On 19-9-2003 at about 6-00 P.M., on reliable information about the illegal possession & sale of I.D. Liquor at 18-4-795 / 45, Pancha Lingala Temple Area, Faluknuma, Sri R.Ravinder Reddy, Prohibition and Excise Sub Inspector, SDTF, Hyderabad along with staff raided on the said house and found one boy juvenal there selling I.D.Liquor. On searching, the officers found 800 I.D. Liquor sachets in

> the said house. On interrogation, he revealed his name as Chandra Sekhar, S/o Narasimlu and that he was selling the said I.D. Liquor sachets on your behalf one daily wage basis. The Investigating Officer seized the contraband and drawn the samples, and a case was registered against you and said Chandra Sekhar in C.O.R.No.212/03-04 of SHO, Charminar, U/Sec. 7A R/w 8 (e) of A.P. Prohibition Act, 1995. Said Juvenal was arrested and released on bail. Subsequently, you are also arrested on 27-3-2004 and later released on bail.
>
> The sample of I.D. Liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner reported in his C.E. Report stated that the sample is Illicitly Distilled Liquor, unfit for potable purpose. The charge sheet is filed in XIV MM, Nampally by SHO, Charminar and C.C.No.222/04 is pending trial."

Similar ground was, as Ground No.3 in the other writ petition i.e., W.P.No.19671 of 2004. It is submitted that the cases are covered by a Full Bench Judgment of this Court reported in ***S.Jayamma v. Collector and District Magistrate, Cuddapah***. It is established now that in terms of the Act, the grounds of detention are not separable and has already been held by this court in several judgments, basing the opinion on Judgments of the Supreme Court reported in ***Sk.Serajul v. State of West Bengal*** and ***K.Chinnappa Reddy v. District Collector-cum-District Magistrate and others***.

Therefore, other grounds cannot be taken into consideration. As far as the ground relating to seizure of illicit liquor, this Court in the Full Bench Judgment in S.Jayamma's case (1 supra) has laid down that unless the report was available, the seized material could not be termed as 'illicit liquor', and as such, the ground was irrelevant and extraneous. In para 16, the Full Bench said that:

> "The case on hand stands on a better footing; the reports are not yet received. Therefore, before the report of the analyst is received mentioning the same as one of the grounds of detention is to be held irrelevant and extraneous. It is also beyond the place of controversy that if the detention order contains relevant and irrelevant grounds, the entire order of detention gets vitiated and it does not survive to the extent of relevant grounds. Under these circumstances, even on merits also we find that the order of detention is not sustainable, accordingly it is set aside."

For these reasons, we allow the writ petitions and the detention orders are hereby quashed. The respondents are directed to release the detenus forthwith, unless they

are required in any other case.

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BILAL NAZKI,J

Dated:22-11-2004

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CH.S.R.K.PRASAD,J

GJ

That Rule Nisi is made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on this Monday the Twenty Second day of November Two Thousand and Four.

ASSISTANT REGISTRAR

To

1 The Collector & District Magistrate, Hyderabad District, Hyderabad.

2 The Superintendent of prison, Central Prison, Chanchalguda, Hyderabad.
3 The Chief Secretary to Government, Government of Andhra Pradesh, General Administration (Law & order-II)Department, Secretariat, Hyderabad.

4 Two C.Cs. to the Advocate General, High Court of A.P., Hyderabad.(OUT)

5 Two C.D. copies.